

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DIOMINA ASTO,

Plaintiff,

ECF CASE

- against -

Docket No. 07 CIV 4787
(UA)(GAY)
WP4

THERESA R. BETTER and ROBERTO BETTER,

Defendants.

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PLAINTIFF'S MEMORANDUM OF LAW

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On the Memorandum
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PRELIMINARY STATEMENT

This Memorandum of Law is submitted on behalf of the plaintiff in support of his motion to remand this action to the Supreme Court of the State of New York, Bronx County, on the ground that there is no federal subject matter jurisdiction, as well as for an award of costs and attorneys' fees Under 28 USC §1447(c). The instant action seeks to recover monetary damages for personal injuries sustained by the plaintiff. The plaintiff's complaint consists of one cause of action based on principles of common-law negligence and sounding in premises liability. As required under New York State law, the complaint does not state any claim for a specific amount of damages.¹

The facts relevant to this motion are recited in the annexed declaration of Robert W. Folchetti and supported by the exhibits referred to therein. The Court need not be burdened with further recitation of the facts herein.

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QUESTION PRESENTED

Should this action be remanded to the New York Supreme Court, Bronx County?

Short Answer: Plaintiff contends that this question should be answered in the affirmative.

Should the plaintiff be awarded attorneys' fees and costs in connection with the instant motion?

Short Answer: Plaintiff contends that this question should be answered in the affirmative.

¹ New York Civil Practice Law and Rules §3017(c).